

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19

SABO, INC., d/b/a HOODVIEW  
VENDING CO.

Employer

and

Case 36-RC-6454

ASSOCIATION OF WESTERN PULP &  
PAPER WORKERS, affiliated with  
the UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS OF AMERICA

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, the undersigned makes the following findings and conclusions.<sup>1</sup>

**I. SUMMARY**

Sabo, Inc., d/b/a Hoodview Vending Co. ("the Employer") is an Oregon corporation engaged in the business of providing vending and office coffee services out of its facility in Tualatin, Oregon. The Association of Western Pulp & Paper Workers, affiliated with the United Brotherhood of Carpenters and Joiners of America ("the Petitioner") seeks to represent a unit of approximately ten full-time and regular part-time route drivers, technicians and route supervisors employed by the Employer out of its Tualatin facility, excluding all other employees, guards and supervisors as defined in the National Labor Relations Act ("the Act").

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<sup>1</sup> The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer, and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

The Employer asserts that LaDonna George, the sole Route Supervisor employed by the Employer, is a supervisor under Section 2(11) of the Act, and as a result should be excluded from the petitioned-for unit. The Petitioner asserts George is not a supervisor, and accordingly should be included in the petitioned-for bargaining unit.

I have carefully reviewed and considered the record evidence.<sup>2</sup> As set forth below, I conclude that the Employer has failed to carry its burden to prove LaDonna George is a supervisor within the meaning of Section 2(11) of the Act.

Below, I have set forth the relevant evidence contained in the record, as well as the legal standard utilized by the Board in regard to supervisory determinations. Following that portion of the Decision, I have applied the supervisory standard to the evidence and articulated my determination. In the conclusion, I have addressed the details of the directed election and the procedures for requesting review of the decision.

## **II. RECORD EVIDENCE<sup>3</sup>**

### **A. The Employer's Operations**

The Employer is a vending machine and office coffee supply company that installs, services, and stocks vending and coffee machines for businesses ranging as far south as Salem, Oregon and as far north as southwestern Washington State.<sup>4</sup> Food dispensed by the vending machines operated by the Employer includes snacks, such as candy bars and potato chips, soda, and fresh and frozen food.

The Employer's sole facility is located in Tualatin, Oregon and is divided between warehouse and office space. In addition to LaDonna George, the single Route Supervisor, approximately eight route drivers and one technician, Gary Dalton, work out of the facility. Working on the office side of the Employer's facility are Nikola Letley, the office assistant, and Benjamin Letley, the Employer's only sales employee. Supervising the Employer's operations on a day-to-day basis is the General Manager Michael Layton while the two owners, Bob Hill and Sally Layton-Hill, oversee Michael Layton.<sup>5</sup>

After Bob Hill or Benjamin Letley secure a new account, either Michael Layton or George installs the desired machine at the customer's place of business. With the new machine in place, the responsibility for keeping it clean and stocked with the appropriate items falls to the route drivers, while Gary Dalton performs any repairs that are

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<sup>2</sup> At hearing, the Employer and Petitioner waived their respective rights to file briefs.

<sup>3</sup> At hearing, the testimony consisted of the Employer calling one of the owners, Sally Layton-Hill, and the Petitioner calling Route Supervisor LaDonna George.

<sup>4</sup> In the Employer's terminology, each customer is referred to as an "account".

<sup>5</sup> The parties stipulated at hearing that Nikola Letley, Benjamin Letley, Michael Layton, Bob Hill and Sally Layton-Hill are properly excluded from the unit. In view of the parties' stipulation, I will exclude the office clerical employee, sales employee, general manager and owners.

necessary.<sup>6</sup> While Dalton reports directly to the General Manager Michael Layton, the route drivers report in the first instance to LaDonna George and may also interface with Layton.

## **B. Route Drivers**

The route drivers are divided into groups based on the type of goods they deliver. The cold food drivers stock vending machines carrying fresh food, such as sandwiches, and frozen food. Snack drivers stock the machines containing items such as candy, potato chips, soda and bottled water. The Employer also has one office coffee driver who stocks and services coffee machines.

Regardless of the type of product carried, the daily routine for route drivers is relatively similar. Upon arriving at the Tualatin facility, the drivers clock in and don the company uniforms.<sup>7</sup> Drivers then load their trucks with products “picked” off the shelves of the warehouse the night prior. The number and type of products a driver carries is dependent on his or her assigned route. In order to determine what to load onto the trucks, the driver first examines his or her “route slip” that details the number of stops and the type of product needed. This information is then translated by the driver into a “load sheet” that lays out what the driver will need to pick from the shelves of the warehouse. The route slips assigning drivers to their various stops, as well as the sequencing of those stops, are written by Sally Layton-Hill.<sup>8</sup>

After loading their vehicles, the drivers then leave the facility to visit the various accounts located along their respective routes where they are responsible for filling the vending machines, switching out old or outdated product and generally keeping the machines clean. Upon completing their routes, the drivers return to the Employer’s facility at the end of the day. Drivers are then expected to unload any perishable product, used cardboard and any other packaging materials, and generally clean the interior of their vehicles.<sup>9</sup> Depending on the time of day, they then may look at their route slips for the following day in order to determine which products will be needed.

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<sup>6</sup> If, in the course of her duties as Route Supervisor, George finds a mechanical problem with a vending machine, she has the knowledge to repair it and may actually do so.

<sup>7</sup> While employees work “flexible work schedules” based on a 4-day work week, the record is silent regarding the specifics of employees’ work schedules.

<sup>8</sup> After Layton-Hill writes the route slips establishing the sequencing of the stops, George may review the slips to ensure that the order in which drivers are required to stop at the various accounts is arranged in an efficient manner. If the stop sequencing is not set up efficiently, George informs Layton-Hill of what needs to be done to correct the sequencing as Layton-Hill has little or no experience driving routes, while George has driven all of the routes and is knowledgeable about the most effective way to set up stops. Layton-Hill will then make the necessary corrections.

<sup>9</sup> At the end of the day, after the route drivers leave, the Route Supervisor is responsible for inspecting the Employer’s fleet of nine vehicles to ensure everything is properly stored, maintained, and cleaned.

### **C. Route Supervisor**

LaDonna George was promoted from route driver to Route Supervisor in June, 2007.<sup>10</sup> The record discloses that she has spent roughly 14 of those months, or approximately 70% of the time, doing the job of a route driver as she fills in for employees who are ill or on vacation. George also currently works part-time as an office assistant in which capacity she, among other things, posts and distributes route slips, and counts and processes money collected from the Employer's various vending machines. The record establishes that from the time she was promoted to Route Supervisor, George has spent 2 months, or approximately 10% of the time, working in the capacity of office assistant.

A document titled "Office Assistant/Receptionist Responsibilities In Addition to Route Supervisor Responsibilities" produced by Petitioner at hearing lists ensuring route drivers work 40 hours a week as another of George's responsibilities. If drivers do not accrue 40 hours in a week by driving their respective routes, the document enumerates a number of tasks to which they can be assigned. These tasks primarily relate to work around the warehouse including sweeping and mopping, organizing the freezer, and cleaning the walk-in cooler and the trucks. There is no record evidence of George actually assigning drivers to these discrete tasks.

The Employer claims that in addition to the above-mentioned duties, the Route Supervisor's responsibilities include the following: vacation/sick relief for drivers; route auditing/act upon findings; order fresh food; review time sheets for logical route sequencing; review and correct over/short reports; driver compliance with handbook rules and regulations; spoils review and correction; schedule trucks for maintenance; check trucks for spoils and product rotation; performance reviews/written; discipline drivers by warning/suspension/firing; schedule regular meetings; start safety committee and compliance; learn vending program; schedule routes for holidays/vacations; train new drivers and responsibility to hire and fire when needed.<sup>11</sup>

Of the responsibilities set forth in the Job Opening, only a certain number could be considered to be of a supervisory nature within the meaning of Section 2(11) of the Act. As such, the following will set forth those responsibilities and describe George's activity under each, as established in the record.

#### **1. Conducting Route Audits**

With 70% of her time spent filling in for route drivers and 10% of her time spent filling in as an office assistant, conducting route audits comprises the most significant activity, in terms of time, for the remaining 20% of the period George has worked as Route Supervisor. Routes to audit are selected by George based on a number of

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<sup>10</sup> There is contradictory testimony regarding when the Route Supervisor position was created. While Layton-Hill testifies that it was created in either 2003 or 2005, George testifies that there has been a Route Supervisor position since she was hired in 2001.

<sup>11</sup> At hearing, the Employer produced a "Job Opening" document listing these additional responsibilities. George testifies that she never saw the Job Opening document prior to the hearing.

factors specific to either the driver or the route itself. These factors include the relative experience of the driver or a number of customer complaints on a specific route. George may also conduct an audit of a specific route on the request of Sally Layton-Hill.

After selecting a route, George then prints out the appropriate route slip and follows behind the driver, checking the machines at the account in order to assess whether the employee is performing adequately. In her inspections of the vending machines, George utilizes a checklist prepared by the Employer. This checklist, titled "Location Inspection," lists a number of items route drivers are required to check at each account. In addition to noting such basic information as the date, location of the account, type of machine inspected and driver(s), George also takes note of any item that is not up to standard, with space for written comments at the bottom of the form. In the space for written comments, George may also make note of any problems not specifically noted on the Location Inspection sheet.<sup>12</sup>

On returning from the route audit, George provides the relevant employee with a copy of the Location Inspection sheet, with another copy going to the employee's personnel file. Although these reports may point out less than satisfactory performance in one or more areas, witness testimony reveals that they are not considered by the Employer to be disciplinary in nature.

## **2. Performance Reviews**

Even though performance reviews of employees may have been conducted by the Route Supervisor at one time, the record establishes that, at all times relevant herein, this responsibility has been removed from the Route Supervisor's position. Moreover, the record contains no evidence of a Route Supervisor ever conducting such a review.

## **3. Discipline Drivers by Warning/Suspension**

In connection with the Route Supervisor's duty to ensure employee compliance with the rules and regulations established in the Employer's employee handbook, the Job Opening form indicates he or she has the authority to discipline drivers by warning and/or suspension. With respect to suspending employees, however, the record does not establish any instances when employees were actually suspended. Moreover, Sally Layton-Hill testified that since George became the Route Supervisor in 2007, the Employer has not suspended any employees.

The record does reveal a number of instances when George issued employees some form of notice regarding specific deviations from established company policy.<sup>13</sup> There is contradictory testimony regarding whether George issues the notes to employees on her own volition or only after conferring with Sally Layton-Hill. Layton-Hill

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<sup>12</sup> An additional comment, for instance, may refer to low levels of particularly popular products.

<sup>13</sup> The varying forms could include a simple handwritten note presumably given to an employee and/or a typewritten memorandum to an employee. The record does not establish a distinction between these forms regarding their impact on employee job status and does not disclose when, or for what reason, George would use one form over another.

testified that it is not customary for George to speak with her about an incident prior to notifying the employee of his or her noncompliance with company policy. On the other hand, George testified that she almost always speaks with Layton-Hill first, apprising her of the situation and asking for her input as to how she wants it handled. Irrespective of the manner in which the decision to issue a route driver a notice is reached, George then addresses the issue in writing, in one of the various forms mentioned above, with copies to the relevant employee, their personnel file and to Sally Layton-Hill.

The record does not specifically identify the direct impact of these memoranda to employees. While Sally Layton-Hill testified that she considers the memoranda when granting raises and that they would play a role in her decision whether to terminate or lay-off an employee, the Employer provided no concrete examples in this regard.

Furthermore, the record establishes that these memoranda are distinct from the progressive disciplinary system set forth in the Employer's employee handbook.<sup>14</sup> As per the Employer's formal policy, employees are to receive two "verbal" warnings prior to a written warning.<sup>15</sup> The record is silent regarding what type of employee conduct is required in order to be cognizable under the disciplinary policy as well as what discipline (e.g. suspension, discharge, etc.) follows the written warning. Further, the record does not indicate that any oral warnings preceded the memoranda that were produced at hearing by the Employer. Moreover, while one route driver, Mark Ritchie, received five memoranda within the course of 1 year, the record does not reveal any adverse personnel action against him, such as suspension or termination.

#### **4. Responsibility to Hire and Fire**

The Route Supervisor's role in the Employer's hiring process is relatively limited. As Layton-Hill testified, either she or Bob Hill will conduct the initial interview with the candidate without George. Following the initial interview, the candidate will go on a 'ride-along,' usually with George, although in the past, other route drivers, including Daniel Brown, Dwight Cunningham and Mark Ritche, have also taken prospective candidates on ride-alongs.<sup>16</sup>

During the pre-hiring ride-alongs, George will show the applicant the basic duties and responsibilities of a route driver. At the same time, George will also informally evaluate the individual as to their ability to effectively perform the job. Characteristics evaluated by George, but not written down by the Employer in any sort of formal sense, include whether the applicant asks questions, whether he or she tries to help George out in performing the work, as well as their walking speed as slower individuals will have a much more difficult time completing a route than those who walk more quickly.

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<sup>14</sup> The handbook was not introduced into the record and very limited testimony was presented regarding only the first stages of the Employer's progressive disciplinary policy.

<sup>15</sup> The record is silent on whether these verbal warnings are documented in a particular fashion.

<sup>16</sup> George also testifies that she took employees on ride-alongs while she was still a route driver, prior to her promotion to Route Supervisor.

On returning to the Employer's facility near the end of the day, the applicant will then be interviewed a second time by Sally Layton-Hill or Bob Hill.<sup>17</sup> The purpose of the second interview is primarily to gauge the individual's reaction to the job of route driver after being exposed to the position's main duties and responsibilities. Consequently, one of the Hills will then ask the applicant what they thought of the job. The applicant's response will help determine whether the interviewer will solicit George's opinion regarding the individual. If, for instance, during the second interview the applicant indicates that they are not comfortable driving in downtown Portland, where the Employer has a number of accounts, Sally Layton-Hill or Bob Hill will make the decision not to hire the individual and begin searching for another applicant to interview. If the job candidate does like the job and answers the interviewer's questions in a satisfactory manner, the interviewer will ask for George's opinion of the employee and their performance during the ride-along.

The record testimony is contradictory on whether George makes a formal recommendation to Bob Hill or Sally Layton-Hill or merely reports on how the job candidate performed on the route. George testified that she merely reports on her perception of whether the applicant is looking to be hired and his or her overall potential in performing the job well. Conversely, Layton-Hill testified that, in addition to reviewing the candidate's general performance, George will also make a recommendation on whether to hire the individual. Layton-Hill testified about several instances within the past year and a half when she followed George's recommendation such as in the hiring of Patrick Losson, Tami Schnabel and Erika Fischer. However, Layton-Hill also testified that Jeremy Shivley was hired without any recommendation from George.<sup>18</sup>

While the record reveals George has never terminated an employee on her own, or been told she had the authority to do such, Sally Layton-Hill testified that George's recommendation would play a role in such a decision. Without providing any specific instances, Layton-Hill testified in general terms that, if a route driver was having serious performance issues, George would be consulted whether the driver could improve, and, in the absence of improvement, asked for her recommendation on termination. Assuming that George's recommendation was to fire the employee in question, the matter is then passed back to Sally Layton-Hill for a final decision and appropriate action.

## **5. Secondary Indicia**

The record contains evidence regarding several of the secondary indicia of supervisory status as it relates to the Route Supervisor position.

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<sup>17</sup> There is contradictory testimony whether George has any participation in the actual interviews of potential employees. Layton-Hill testified that George may possibly sit in on the second interview, whereas George categorically denies ever participating in the interviewing process for hiring. The record does not contain any specific instances of George sitting in on an interview.

<sup>18</sup> The record is silent on the exact date of hire for these employees.

**a. Attendance at Supervisory Meetings**

Sally Layton-Hill describes one “management meeting” in November 2008 after the Employer lost a large account, at which George was in attendance. The record reveals that during the meeting those present discussed which employee or employees would be laid off, if necessary. During the discussion, George was asked for her recommendation. There is no evidence that these meetings occur on a regular basis and, even if such is the case, that George is required to attend.

**b. Wages and Benefits**

The Job Opening form produced by the Employer purports to describe the duties of the Route Supervisor position and lists as wages “\$2700 salary.” The record is unclear as to the period of time represented by the \$2700 salary. However, George testified she had never seen the document before. Furthermore, the record contains no evidence of the salaries, wages or benefits of the route drivers, or any other employee of the Employer, or whether the “\$2700 salary” represented a raise for George from the salaries or wages of route drivers.

**c. Regarded as Supervisor by Other Employees and Admitted Supervisors**

Although owner Sally Layton-Hill testified that she considers LaDonna George a supervisor, there is no record evidence indicating that employees have been notified George possesses any of the 2(11) indicia of supervisory authority or authority to act as a supervisor in the absence of the owners and the General Manager. Indeed, the record is silent as to any instances when George is the highest ranking individual at the facility. I also note that there is no dispute that George spends considerable time away from the facility performing her responsibilities such as auditing routes and filling in for other drivers.

**III. LEGAL ANALYSIS**

**A. Supervisory Authority**

Section 2(3) of the Act excludes any individual employed as a supervisor from the definition of “employee.” Section 2(11) of the Act defines “supervisor” as:

Any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

In *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006), the Board, citing *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 713 (2001), iterated its three-part test, which finds individuals to be statutory supervisors if:



(1) they hold the authority to engage in any 1 of the 12 supervisory functions (e.g., "assign" or "responsibly to direct") listed in Section 2(11);

(2) their "exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment"; and

(3) their authority is held "in the interest of the employer."

The Board has also established that the burden to prove supervisory authority, by a preponderance of the evidence, is on the party asserting it. *Croft Metals, Inc.*, 348 NLRB 717, 721. (2006). See also *Loyalhanna Health Care Associates t/d/b/a Loyalhanna Care Center*, 352 NLRB No. 105 (2008). "Purely conclusory" evidence is not sufficient to establish supervisor status; and a party must present evidence that the employee "actually possesses" the Section 2(11) authority at issue. *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006). To qualify as a supervisor, it is not necessary that an individual possess all of the criteria specified in Section 2(11), instead, possession of any one of them is sufficient to confer supervisory status. *Lakeview Health Center*, 308 NLRB 75, 78 (1992). "Whenever the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia." *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989).

It is also well established that the party seeking to establish supervisory authority must show that the putative supervisor has the ability to require that certain action be taken; supervisory authority is not established where the putative supervisor merely has the ability to request that a certain action be taken. *Golden Crest*, 348 NLRB at 729, citing *Heritage Hall, E.P.I. Corp.*, 333 NLRB 458, 459 (2001).

In the instant case, while the Employer does not specifically articulate on what grounds the Route Supervisor should be considered a supervisor within the meaning of the Act, the record contains evidence concerning her purported authority to discipline, to make effective recommendations regarding hiring, and to assign and responsibly direct employees.

## **B. Discipline**

The record is clear that the Route Supervisor drafts and issues written memoranda to route drivers, which are subsequently placed in their personnel files, in light of their substandard performance in a variety of areas. What is not clear, however, is the role of Sally Layton-Hill in the process. As previously noted, Layton-Hill's testimony contradicts that of LaDonna George. While George testifies that she nearly always refers problems regarding route drivers' work performance to Layton-Hill for a decision on how to respond, Layton-Hill testifies that George acts on her own in writing and issuing the memoranda to employees. This distinction is crucial as, according to George, she merely approaches Layton-Hill when a problem arises, rather than acting on it based upon her own independent judgment. Thus, George's testimony would support finding that her function in this regard is merely reportorial in nature. Such

limited authority would not be considered supervisory within the meaning of Section 2(11) of the Act. *Ryder Truck Rental, Inc.*, 326 NLRB 1386 (1998). As the testimony is in conflict on this point, I cannot conclude such warrants a supervisory finding. *Phelps Community Medical Center*, supra.

Furthermore, while I am not attempting to resolve the credibility dispute regarding the memoranda to employees, I note a document in the record that touches on this issue, namely the memorandum issued to George by Layton-Hill, requires that she “report problems” to management. Layton-Hill also acknowledges that there may have been discussions between her and George prior to at least one of the memoranda being issued to the route drivers by George.

Further, assuming, *arguendo*, that George issues the memoranda to employees on her own volition, I still find that the Employer has not met its burden to prove that George disciplines employees. For a written warning of the sort issued by George to constitute discipline within the meaning of Act, the warnings must “not only initiate, or be considered in determining future disciplinary action, but also ... must be the basis of later personnel action without independent investigation or review by other supervisors.” *Phelps Medical Center*, supra, citing *Passavant Community Medical Center*, 284 NLRB 887, 889-890 (1987).

The memoranda and other notes issued to route drivers by George are nearly identical to those issued by the nurses in *Passavant Community Medical Center*. There, as here, the written warnings do not contain any recommendations for disciplinary action or appear to have had any impact on job status. Rather, they merely describe incidents involving unacceptable behavior (such as leaving dirty uniforms around the Employer’s facility) and substandard job performance (such as failing to place ice packs in a cooler filled with candy to prevent it from melting). Furthermore, the record does not establish that the Route Supervisor possesses the discretion to determine what corrective action should be taken if an employee receives several of these memoranda. One employee, in fact, received at least five such warnings during the course of 1 year without any apparent adverse consequence. The record further reveals that any action based on the accumulation of such memoranda is determined by Sally Layton-Hill. In short, the Employer did not detail in the record how the memoranda and similar notes fit into the Employer’s progressive discipline policy, which I also note was not detailed in the record. Consequently, the record does not establish that these memoranda impact job tenure or status. Rather, the record reveals that these purported warnings do little more than report infractions to management and serve solely a reporting function, which has been found by the Board not to constitute supervisory authority. *Williamette Industries, Inc.*, 336 NLRB 743, 744 (2001).

### **C. Hiring**

Here, I initially note that George specifically denies ever having seen the Job Opening form supposedly detailing the Route Supervisors duties or ever having been told she has the authority to “hire and fire when needed.” Generally, employers must

notify their purported supervisors that they possess indicia of supervisory authority. See *Volair Contractors, Inc.*, 341 NLRB 673 (2004).

Further, assuming, *arguendo*, that George had been informed that she has the authority to hire employees or effectively recommend such, I still find that the Employer has not carried its burden. In this regard, the record clearly established that the two owners, Bob Hill or Sally Layton-Hill, have the sole responsibility to interview selected applicants. While George may sit in on the second interview conducted after the candidate goes on a ride-along with George, the record reveals that her presence at the second interview is merely incidental to providing certain information to the Hills. Specifically, George's appraisal of the applicant following the ride-along is primarily an assessment of the individual's ability to perform the job. The Board has consistently held that such assessments of an applicant's technical ability to perform the required work does not constitute an effective recommendation to hire. See *Aardvark Post*, 331 NLRB 320 (2000) and cases cited therein. Here, Sally Layton-Hill or Bob Hill may have relied on George's technical assessment of applicants but such reliance represents deference to her expertise in the skills required by a route driver, knowledge Layton-Hill admitted on the record she lacks, rather than a delegation of supervisory authority to George by the Employer.

Moreover, for a putative supervisor to effectively recommend an action, the action "must be taken with no independent investigation by superiors." *ITT Corp.*, 265 NLRB 1480, 1481 (1982). Here, after George delivers her assessment of an applicant to either Bob Hill or Sally Layton-Hill, the owners then independently evaluate the candidate, factoring George's input in their ultimate decision. Such was the case when employee Jeremy Shivley was hired despite the absence of any recommendation by George. Consequently, to the extent that George's input is considered, it merely reflects her experience as a route driver, rather than the possession of the type of authority contemplated by Section 2(11) of the Act.<sup>19</sup> See *Oregon State Employees Association*, 242 NLRB 976, 983 (1979). Based on the foregoing and the record as a whole, I find that George does not possess the authority to hire or to effectively recommend the same.

#### **D. Assignment**

"Assignment" is defined as the "giving [of] significant overall duties, i.e., tasks, to an employee," as well as "designating an employee to a place (such as location, department, or wing), [and] appointing an employee to a time (such as a shift or overtime period)." *Oakwood Healthcare*, 348 NLRB at 689. However, every instruction in the workplace is not assignment; "significant overall duties" do not include "ad hoc instructions to perform discrete tasks;" these instructions are considered "direction" of a nonsupervisory nature. *Oakwood Healthcare*, *supra*.

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<sup>19</sup> I further note that a number of other nonsupervisory employees have conducted ride-alongs with applicants. To the extent that the Employer does not assert these other employees possess supervisory authority in this respect, it would be incongruous to reach such a result with respect to George.

The primary record evidence pertaining to George's assignment of route drivers concerns her role in clarifying the sequencing of the stops along a given driver's route. Specifically, the record reveals that if Layton-Hill, who is responsible for writing route slips, schedules the stops in an inefficient manner, George may make a recommendation on how to arrange the route more effectively. George does not make the actual corrections on her own as those are done by Layton-Hill.

Consequently, with respect to scheduling routes, the record reveals the following:

- George does not write the route slips that assign employees to the various routes;
- if she notices a problem, she does not effectively recommend the sequencing of stops as her recommendation is then independently judged by Sally Hill-Layton; and
- any change George recommends appears to be an ad hoc assignment which does not constitute authority to assign employees. See *Oakwood Healthcare*, supra.

The record also reveals that George is responsible for ensuring that the drivers work 40 hours a week. In order to accomplish this, the Employer provided George with a list of tasks around the Employer's facility such as sweeping, mopping and general cleaning. While there is no testimony that George has ever actually required that employees undertake such activities in order to meet their 40 hour a week requirement, the types of activities described in the record merely represent a pre-determined list of discrete tasks within the meaning of *Oakwood Healthcare*, supra, and as such, do not establish that George possesses supervisory authority in this respect.

Based on the record evidence and reasons given above, I find that the Employer has not met its burden to prove that LaDonna George possess the authority to assign or effectively recommend the same.

#### **E. Responsible Direction**

The difference between assignment of work and responsible direction of work is a question of accountability: the 2(11) function of assign can exist even when the putative supervisor is not accountable for how the staff performs their assignments. In contrast, the 2(11) function of "responsibly to direct" only exists when the putative supervisor is "accountable" for the proper performance of tasks by other employees. *Oakwood Healthcare*, 348 NLRB at 692. Accountability is established where putative supervisors have the authority to take corrective action and are subject to adverse consequences for the performance of their staff. *Oakwood Healthcare*, supra.

The requisite showing of accountability, however, is not present where the putative supervisor is disciplined because of his or her own inadequate performance. Rather, the requisite showing is present only when the putative supervisor satisfactorily performed his or her own duties but nevertheless is disciplined because the staff failed

to properly perform their tasks as directed by the putative supervisor. For example, lead persons in a manufacturing setting were held accountable where they received written warnings because their crews failed to meet productions goals. *Croft Metals*, 348 NLRB at 722. On the other hand, when a charge nurse was disciplined for failing to make fair assignments, she was held accountable only for her own performance and not that of other employees. *Oakwood Healthcare*, 348 NLRB at 695. Here, in contrast to *Croft Metals*, there is an absence of evidence that the Route Supervisor is subject to discipline or other immediate consequences for the actions of the route drivers who are under her direction.

In fact, the only record evidence concerning George's responsible direction of route drivers is the two written warnings issued to her by Sally Layton-Hill. The first memorandum, issued on January 1, 2008, addresses items solely related to her own job performance, such as keeping her mailbox clean, submitting vehicle reports on a regular basis, and ensuring that the route drivers she trains work 40 hours a week. The second memorandum, dated September 17, 2008, similarly notes George's failure to sufficiently do her job. While a few of the items listed in the second memorandum touch on the job performance of route drivers, the issue was brought to the attention of George for her failure to notice and report the problem. As such, these written warnings were issued to George, not for the failings of the route drivers, but rather her own failure to notice and report the problems. This sort of responsibility is not of the sort found by the Board in *Croft Metals* and *Oakwood Healthcare* to constitute "responsible direction."

In light of the above and the record as a whole, I find that the Employer has not met its burden of establishing that George possesses the authority to responsibly direct employees.

#### **F. Secondary Indicia**

Secondary indicia, including an individual's job title, their attendance at mandatory meetings, the ratio of supervisory to nonsupervisory employees and differences in wages and benefits, can only be used to determine supervisory status when evidence of primary indicia is present. *Avante at Wilson, Inc.*, 348 NLRB 1956, 1061 (2006). Here, while LaDonna George's job title is "Route Supervisor," there is no record evidence to establish that George possesses other secondary indicia of supervisory status. Not only is there no evidence in the record that she receives different wages and benefits, but there is also no evidence that she regularly or frequently attends management meetings. In view of the above and the record as a whole, I find that secondary evidence of supervisory authority fails to support the Employer's position, particularly in view of my finding that George does not possess primary indicia of supervisory authority.

#### **IV. Conclusion**

Based on the above and the record as a whole, I conclude that the Employer has failed to meet its burden of establishing that LaDonna George is a statutory supervisor within the meaning of Section 2(11) of the Act.

Accordingly, I shall direct an election in the following appropriate Unit:

All full-time and regular part-time route drivers, technicians and Route Supervisors employed by the Employer out of its facility located at 19660 Southwest 118<sup>th</sup> Avenue, Tualatin, Oregon; excluding all office clerical employees, sales employees, general managers, guards and supervisors as defined in the Act.

There are approximately 10 employees in the Unit found appropriate.

#### **V. DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Association of Western Pulp & Paper Workers, affiliated with the United Brotherhood of Carpenters and Joiners of America.

##### **A. List of Voters**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an

election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Officer-in-Charge for SubRegion 36 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The SubRegion shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the SubRegional Office, 601 SW Second Ave., Suite 1910, Portland, OR 97204-3170, on or before **February 20, 2009**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (503) 326-5387. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

## **B. Notice Posting Obligations**

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **C. Right to Request Review**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **February 27, 2009**. The request may be filed through E-Gov on the Board's website, [www.nlr.gov](http://www.nlr.gov), but may not be filed by facsimile.<sup>20</sup>

**DATED** at Seattle, Washington, this 13th day of February, 2009.

/s/ Richard L. Ahearn  
Richard L. Ahearn, Regional Director  
National Labor Relations Board, Region 19  
2948 Jackson Federal Building  
915 Second Avenue  
Seattle, Washington 98174

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<sup>20</sup> To file a request for review electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the E-Gov tab. Then click on the E-filing link on the menu. When the E-file page opens, go to the heading Board/Office of the Executive Secretary and click the "File Documents" button under that heading. A page then appears describing the E-filing terms. At the bottom of the page, check the box next to the statement indicating that the user has read and accepts the E-File terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the "Submit Form" button. Guidance for E-Filing is contained in the attachment supplied with the Regional office's original correspondence in this matter and is also located under "E-Gov" on the Board's website, [www.nlr.gov](http://www.nlr.gov).